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Legal Self-Defense by Registries and Dispute Policy

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DENIC

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- **D**Eutsches **N**etwork **I**nformation **C**enter
- registry for .de
- eG (registered cooperative)
 - members: 130 Internet service providers
- not for profit
- currently around 3.3 million domain names registered (approx. 200,000 per month)
- around 40 employees

Registration with DENIC

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- approx. 99.5% through DENIC members
 - completely automatic on DENIC's side
- approx. 0.5% through *DENICdirect*
- first come, first served basis
- checking with regard to technical aspects and availability only
- no checking for legal implications
 - very liberal registration rules

Disputes

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- domain name holder's right to name is challenged by complainant (claiming better right)
- dispute between complainant and domain name holder; if necessary, before a court
- DENIC does not get involved

DENIC and Disputes

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- DENIC implements final result of dispute
 - cancellation of domain name or transferral to complainant by holder
 - commitment of holder not to use domain name
 - injunction and final acceptance of it by domain name holder
 - final court ruling
- DENIC has provided for this in registration contract

- DENIC has not implemented dispute resolution process like UDRP for gTLDs
 - no need, given speed of German courts and „loser pays all“ principle under German law
 - in cases covered by UDRP for gTLDs DENIC has to act anyway / would be held responsible anyway
 - difficult to implement into registration contracts
 - if own UDRP equivalent, it would be different from UDRP
- but: DENIC offers dispute entry

Dispute Entry: Effects

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- transferral of domain no longer possible
 - holder of dispute entry can start legal action without being in danger of losing his opponent
- in case of cancellation of domain, holder of dispute entry becomes new domain name holder automatically
 - no problem with untimely or unnoticed cancellation of domain name
 - no need to ask court for transferral of domain name to plaintiff (holder of dispute entry)

Dispute Entry: Requirements

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- applicant to present a plausible reason as to why he may have a right to the domain
 - just „first sight“ checking by DENIC
- applicant to take (legal) action against the domain name holder
 - no checking by DENIC
 - dispute entry limited to one year, prolongation possible
- use of special form provided by DENIC
 - indemnification of DENIC

Dispute Entry: Experiences

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- well working
 - fast and simple
 - free of charge
- widely accepted
 - approx. 400 per month
 - especially lawyers specialising in domain name law use it by routine
 - approval of courts and even German Federal Government
- nevertheless DENIC gets involved sometimes

„ambiente.de“

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- „leading case“ with DENIC involved
- parties:
 - Frankfurt Fair Company (plaintiff),
owning trademark „Messe Frankfurt Ambiente“
 - DENIC (defendant),
having registered „ambiente.de“ for individual
- domain name holder had (possibly) committed
not to use the domain name but refused to
cancel it
- plaintiff sued DENIC citing antitrust law

- LG Frankfurt (NJW 1999, 586)
in favour of plaintiff
- OLG Frankfurt (MMR 2000, 36)
in favour of DENIC
 - DENIC not generally obliged to check domain names
for possible right infringements, has to intervene only
in absolutely obvious cases or when a court has
issued a final decision
- Bundesgerichtshof (German Supreme Court)
[still pending]

Conclusions from „ambiente.de“

- DENIC terminates registration contract in absolutely obvious cases
 - immediately clear that domain name infringes third party's right
 - domain name identical with (or confusingly similar to) famous trademark or name
 - obviously registered in bad faith (in fact: no other possible explanation for registration)

Other Cases

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- „foris.de“
 - Foris AG vs. Foris GmbH & DENIC
- „intersearch.de“ et al.
 - injunctions against DENIC
- „nordsee.de“
 - fish restaurant chain vs. Domain name holder & DENIC

„Blocking“ of Domains

- new type of case emerging
- complainant claims domain name infringes his rights, refuses to become domain name holder himself and requests „blocking“ of domain instead
 - complainant „must“ or „can“ register to avoid infringement?
 - simplest way to avoid infringement
 - implementation and maintenance of „black list“ cannot be expected from DENIC

- two law suits so far:
 - one in favour of plaintiff, one in favour of DENIC
- both cases pending on appeal now
- no dispute policy possible in cases like these (no „black list“ wanted / possible)

Criminal Law Impacts

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- „heil-hitler.de“
 - registered by individual
 - not conforming to criminal law (§ 86a StGB)
- domain name cancelled by DENIC
 - by analogy with civil cases (intervention in obvious cases only)
- problem: „blocking“/“black list“

Garnishment of Domains

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- another new developement
- LG Essen (MMR 2000, 286)
 - domains garnishable because transferrable
- LG München I (MMR 2000, 565)
 - at least family name domains cannot be garnished because family names themselves cannot be garnished
- no dispute policy necessary for this

General Conclusions

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- registry should
 - implement some dispute policy
 - also for public appearance
 - win a case like „ambiente.de“
 - ;->
- appeal when having lost
 - necessary because every case is a leading case
 - helpful because possible plaintiffs get discouraged

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